109-3763

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 333. ~~105~~ ~~75~~ 113

THE UNITED STATES, PLAINTIFF,

vs.

SAMUEL NICHOLS.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED FEBRUARY 5, 1877.

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1 UNITED STATES OF AMERICA,
Western District of Missouri, set:

Pleas before the honorable circuit court of the United States in and for the western district of Missouri, at the November term thereof, A. D. 1876, in case of—

THE UNITED STATES, PLAINTIFF,
against
SAMUEL NICHOLS, DEFENDANT.

Be it remembered that heretofore, to wit, on the 17th day of November, A. D. 1876, it being in vacation of said circuit court, the following proceedings were had in this case, to wit:

UNITED STATES
vs. No. 821.
SAMUEL NICHOLS.

This day comes the clerk of the district court of the United States for the western district of Missouri and files herein a transcript of the record in the above entitled cause, together with the following papers, viz, indictment, demurrer thereto, and capias, which are transferred to this court by the order of said district court.

Which said transcript is in the words and figures following, to wit:

Transcript f'r dist. court.

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

I, Louis Schmidt, clerk of the district court of the United States for the western district of Missouri, hereby certify that the writing
2 hereto annexed is a true copy of the record in the case of the United States against Samuel Nichols, indicted by the grand jurors of the United States for the western district of Missouri, and remitted for trial to the circuit court of the United States for the western district of Missouri, as fully as the same remains on file and of record in said case in this office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of Jefferson, in said district, this 9th day of October, A. D. 1876.

[SEAL.] LOUIS SCHMIDT, *Clerk.*

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

In the district court of the United States for the western district of Mo.

THE UNITED STATES
vs. No. 1334.
SAMUEL NICHOLS.

Ind't for denial of civil rights on account of race & color.

Be it remembered that at a regular stated term of the United States district court for the western district of Missouri, begun and held at Jefferson City, in said district, on the first Monday, the fourth day of September, A. D. 1876, the following proceedings were had:

FRIDAY, *September 8th*, 1876.

Present: Honorable Arnold Krekel, judge, to wit:

The grand jurors come into court and make the following presentment, to wit:

3 *Bill found.*

THE UNITED STATES }
vs. } No. 1334.
SAM'L NICHOLS. }

Indictment for denial of civil rights on account of race & color.

A true bill.

And afterward, to wit, at said stated term of said district court, begun and held as aforesaid, and upon said 8th day of Sept., 1876, the following further proceedings were had in said case, to wit:

On this day comes the district attorney on behalf of the United States, and also comes the defendant, Samuel Nichols, in his own proper person and by Lay and Belch, his attorneys, and it being forthwith demanded of the said defendant, of and concerning the premises and how he will acquit himself, for plea, says:

Plea.

He is not guilty as charged in the indictment preferred against him, and for his trial puts himself upon the country, and the United States do the like.

And thereupon, on motion of the district attorney, it is ordered by the court the said defendant, Samuel Nichols, enter into recognizance in the sum of one thousand dollars for himself, and in a like sum on the part of good and sufficient sureties, conditioned for his personal appearance before this court from day to day and term to term thereof, during the pending of the indictment preferred against him for the offence whereof he stands charged.

Recognizance.

And now comes Samuel Nichols, the said defendant, and also comes James F. Reagan, John G. Schott, J. R. Crow, and C. G. Brooks,
4 and severally acknowledge themselves indebted to the United States, each in the sum of one thousand dollars, to be levied of their respective goods and chattels, lands and tenements, and to the United States rendered, conditioned for the personal appearance before this court of said Samuel Nichols, defendant, from day to day and from term to term of said court during the pending of the indictment preferrred against him for the offence whereof he stands charged, as he may be ordered to do, and to obey any and all orders of this court and not to depart the said court without leave thereof.

And afterwards, to wit, at said stated term of the said district court, begun and held as aforesaid, the following further proceedings were had in said case, Saturday, September 9th, 1876:

Plea withdrawn & demurrer filed.

UNITED STATES
vs.
SAMUEL NICHOLS. } No. 1334.

Indictment for denial of civil rights on account race & color.

On this day comes the district attorney on behalf of the United States, and also comes the defendant, Samuel Nichols, in his own proper person and by Lay & Belch, his attorneys, with leave of court withdraws his plea of not guilty and files a demurrer to the indictment.

And afterwards, to wit, on Friday, the 15th day of September, A. D. 1876, the following further proceedings were had in said case:

Questions of law.

UNITED STATES
vs.
SAM'L NICHOLS. } No. 1334.

5 Indictment for denial of civil rights on account of race and color.

On this day comes the district attorney on behalf of the United States, and also comes the defendant, Samuel Nichols, in his own proper person and by Lay and Belch, his attorneys, when, on motion of the district attorney, and it being the opinion of the court that *a* difficult & important questions of law are involved in this case—

Remitted to circuit court.

It is ordered by the court that the indictment herein be remitted for trial to the November term, 1876, of the circuit court of the United States for the western district of Missouri.

Ordered further, that said defendant, Samuel Nichols, personal' appear at said term of said circuit court.

And which said indictment is in the words and figures following, to wit:

Indictment.

UNITED STATES OF AMERICA,
Western District of Missouri, set:

In the U. S. district court for the western district of Missouri, at the September term, 1876.

The grand jurors of the United States of America, duly empannelled, sworn, and charged to inquire in and for the western district of Missouri, on their oath present, that on the twenty-second day of May, in the year of our Lord one thousand eight hundred and seventy-six, at Jefferson City, in Cole County, in said western district of Missouri, one Samuel Nichols, late of said district, was the keeper and proprie-
6 etor of a public inn for the accommodation of travellers and the general public, that is to say, a certain common inn called the Nichols House, of the accommodations, advantages, facilities, and privileges of which inn all persons within the jurisdiction of the United

States were then and there entitled to the full and equal enjoyment, subject only to the conditions and limitations applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

That one W. H. R. Agee was then and there a citizen of the United States of America, and of the State of Missouri, and a person of color and one of the negro race, within the jurisdiction of the United States, and he, the said W. H. R. Agee, being then and there a traveller, was then and there an applicant to the said Samuel Nichols while he, the said Samuel Nichols, was the keeper and proprietor of said inn as aforesaid, for the accommodations, advantages, facilities, and privileges of said inn as a guest therein; but he, the said Samuel Nichols, then and there did deny to the said W. H. R. Agee admission as a guest in said inn, and the full and equal enjoyment by him, the said W. H. R. Agee, as such guest, of the accommodations, advantages, facilities, and privileges of said inn, and he, the said Samuel Nichols, then and there
7 did refuse the said W. H. R. Agee, the accommodations, advantages, facilities, and privileges of said inn as a guest therein, said denial and refusal not then and there being for reasons applicable to citizens of every race and color, and regardless of any previous condition of servitude, but he, the said Samuel Nichols, then and there did deny and refuse said W. H. R. Agee as aforesaid, for the sole reason that he, the said W. H. R. Agee, was a person of color and one of the negro race, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

JAMES S. BOTSFORD,
United States Attorney.

(Indorsed:) 1334. United States vs. Samuel Nichols. Indictment for denial of civil rights on account of race and color.

A true bill.

JACOB ESTEP,
Foreman.

Witnesses: S. R. Gurney, William F. Sullivan, W. H. R. Agee.

Filed September 8, 1876.

LOUIS SCHMIDT, *Clerk.*

Filed Nov. 17, 1876.

H. C. GEISBERG, *Clerk.*

And which said demurrer is in the words and figures following, to wit:

Demurrer.

In the United States district court for the western district of Missouri, September term, 1876.

UNITED STATES
vs.
SAMUEL NICHOLS.

8 And now the said Samuel Nichols cometh into court, and having heard the said indictment read, says that the said indictment and the matters therein contained in the manner and form as therein set forth and charged are insufficient in law, and that the said Samuel Nichols is not bound by the law to answer same; and this he is ready to verify.

That for specific grounds of demurrer, says that there is no act of Congress making the acts charged against said Samuel Nichols an offense indictable in the courts of the United States; that no facts are charged sufficient to charge any offense; that the same is so indefinite and uncertain that the defendant is not advised of the offense intended to be charged; that this court has no jurisdiction in this cause; that the act of Congress under which said indictment was found is unconstitutional and void; that it is a violation of the reserved rights of the States and the citizens thereof.

Wherefore, for want of sufficient indictment in this behalf, the said Samuel Nichols prays judgment, and that by the court may be dismissed and discharged from the said premises in the said indictment specified.

LAY AND BELCH,
Att'ys for Defendant.

9 And which said capias is in the words and figures following, to wit:

Capias.

UNITED STATES OF AMERICA,
Western District of Missouri:

The President of the United States of America to the marshal of the western district of Missouri, greeting:

You are hereby commanded to take Samuel Nichols, if he be found in your district, and him safely keep so that you have him before the district court of the United States at the city of Jefferson, in said district, forthwith, to answer an indictment preferred against him by the grand jury of the United States, for denial of civil rights on a/c of race & color, and do you certify to said court how you execute this writ, and have you then there this writ.

Witness the honorable Arnold Krekel, judge of the United States for the western district of Missouri, this 8th day of September, A. D. 1876.

Issued under seal of said court the day and year last above written.

[SEAL.] LOUIS SCHMIDT, *Clerk.*

Marshal's return.

Executed this writ by arresting the within named Samuel Nichols and brought him before the district court of the U. S. for the western district of Mo., this 8th day of September, 1876.

GEO. SMITH,
U. S. Marshal,
By H. NITCHY, *Deputy.*

And afterwards, at a regular stated term of the said circuit court of the United States in and for the western district of Missouri,
10 begun and held at the city of Jefferson, in said district, on the third Monday, being the 20th day of November, A. D. 1876, the following proceedings were had in this case on the 24th day of November, in said last mentioned year, to wit:

UNITED STATES
vs. } 821.
SAMUEL NICHOLS.

This day comes the district attorney on behalf of the United States, and the defendant by his attorney, A. M. Lay, esqr., and this cause is